

1 to do in the back, besides to get the tape? Go
2 in the safe to get the big quantity of money
3 for the check cashing business. So that's part
4 of their motive, part of their intent, which
5 tells you they were there to rob. Then, of
6 course, we've talked about Ray. And in his
7 statement the defendant says that, doesn't he,
8 and, of course, in his guilty plea.

9 Robbery is basically a theft with force.
10 In other words, it's not like I get you to turn
11 your head and steal your purse. It's like I
12 put a gun to you and you give it to me because
13 you're afraid. You're afraid I'll hurt you.
14 We know it was force because they came in with
15 guns, because they left having injured, in
16 fact, killed the victim, okay?

17 So we've quickly been through the
18 elements. What I'd like to do now is to
19 summarize, in closing, the key piece of
20 evidence. If you took away the defendant's
21 guilty plea, if you took away his statement to
22 the police, there is still sufficient evidence
23 to convict him because of the surveillance
24 tape, the video of the crime. You saw him
25 commit this crime. It's one of those rare

1 opportunities of having the crime actually
2 recorded and being able to play it in front of
3 you. And granted, it's not easy to watch
4 because it was a fast track tape, time lapsed
5 and because it's four frames at one time, but
6 you observed it. You saw what happened. It is
7 this video, I think, that convicts the
8 defendant more than anything else. You can't
9 argue against it, even though he didn't tell
10 the whole truth to the police about not going
11 back and only shooting one time. You saw what
12 he did.

13 Now, you may say, well, yes, Ellen, you've
14 proved that Pop killed him. You've proved Pop
15 is guilty of capital murder, but what about
16 this defendant? In Alabama -- remember when we
17 first started, we talked about this -- in
18 Alabama, the law says that if you plan together
19 to commit a crime, you do anything to help each
20 other, even if you just stand there ready,
21 willing and able to help, you're just as guilty
22 if you know that's what's going to happen. And
23 did he know? Did he know? Look at the facts
24 and what happened.

25 I would suggest that we are here today for

1 one simple reason. This defendant didn't carry
2 out his part of the plan very well. He screwed
3 it up. You know, the three musketeers motto,
4 all for one and one for all. Four people, all
5 for one, one cause, one plan. All four must do
6 their part to make this work. The lookout did
7 his part. He got them in there when the people
8 they wanted to kill were there, no one else.
9 The man with the gun who was going to kill
10 Travis did his part, didn't he? Anthony, the
11 man who had the bag to gather up the money did
12 his part, didn't he? He got out with the money
13 and the gun.

14 The weak link in all of this is Willie
15 Gardner. He screwed up. We're here today
16 because of him. One simple problem. His job
17 was to get the safe open. Didn't do it, did
18 he? His job was to execute Ray, a witness who
19 could and did identify him. He didn't do
20 that. He tried. And his job was to get the
21 surveillance tape out of the machine. You may
22 remember seeing it, the video. It was at the
23 end of the office. There was a monitor and
24 right beside it was the black case where the
25 surveillance tape was kept locked up. And he

1 failed to do the three things he was supposed
2 to do, and that's why we're here today.

3 Does that make him not guilty? Absolutely
4 not. It proves his guilt or we wouldn't have
5 been here. If he had executed the live
6 eyewitness and there was no eyewitness and if
7 he had gotten that tape, we probably wouldn't
8 be here today. So it's the video that convicts
9 him and his failure to do his part in this
10 plan. He's guilty, just as guilty as Anthony,
11 as Taurus, and as Delano Smith.

12 I want to close. My last comment is
13 this. I know human nature is you're sitting
14 here going, well, the State of Alabama had such
15 a good case, why are we here just on capital
16 murder just on the life without parole? Why
17 did you settle this case? And that's what it
18 is. We have a plea agreement wherein the
19 defendant pled guilty to the charge of capital
20 murder, and we agreed to recommend to the Judge
21 life without parole instead of death. And I
22 think you deserve an answer to that.

23 The best that I can say is this. Four
24 people committed this. The State and the
25 families wanted all four held accountable to

1 the fullest extent under the law. And to do
2 so, we had to make a plea agreement, because
3 part of the agreement is that he will now
4 testify against the others, okay? Does it feel
5 good? No. Is it the right thing to do? I
6 don't know. Is it the best that we could do in
7 this situation? I believe so. And that's why
8 I signed my name to that document. But I
9 didn't do so without talking with Robin
10 Benefield and her family, and Ray Davis, and
11 the Montgomery Police Department. So this is
12 what we've all agreed to do.

13 The Judge will be responsible for
14 sentencing. That is not your job at this
15 point. We've agreed to waive that part, to let
16 the Judge do it. I don't know why you have to
17 sit through all this, given that he has pled
18 guilty, except that it is the law of the
19 state. I was not in the Legislature when they
20 decided that. I'm not now either. And in
21 their wisdom, that's what they thought was the
22 best thing to do back years ago. So it is not
23 our job now to send a message and say, no,
24 we're not going to find him guilty because this
25 is silly. He has pled guilty. Your sole

1 responsibility is to weigh all of the evidence
2 and the law the Judge gives you and determine
3 whether or not we have proven our case beyond a
4 reasonable doubt.

5 Obviously, based on all I've been through,
6 the State of Alabama asks you to find the
7 defendant guilty as charged today, confirm his
8 guilty plea, allow us to move forward in the
9 prosecution of all responsible for the tragic,
10 needless death of a young man working on Labor
11 Day and his friend, his co-worker, who has
12 survived multiple surgeries and able to come to
13 court today to tell you what happened and to
14 protect that tape. The evidence is there, the
15 law will support it.

16 Thank you for your service. Thank you for
17 your attention. On behalf of the victims and
18 the entire people of the State of Alabama, we
19 appreciate your service.

20 THE COURT: Ms. Brooks.

21 (The following occurred at the
22 bench outside the hearing of the
23 jury:)

24 THE COURT: I changed this.

25 MS. BROOKS: Both parties are in

1 agreement.

2 (The following occurred in open
3 court:)

4 MR. BELSER: Judge, the defense waives
5 closing argument.

6 (The following occurred at the
7 bench outside the hearing of the
8 jury:)

9 THE COURT: I showed them a jury
10 charge on the burden of proof, and they agreed
11 to it.

12 (The following occurred in open
13 court:)

14 THE COURT: Ladies and gentlemen of
15 the jury, it now becomes my duty to explain to
16 you the law that will guide you in your
17 deliberations, and I would request that you
18 listen carefully to the law as I explain it to
19 you.

20 This case is brought before you by way of
21 an indictment, and I'm going to read that
22 indictment to you: The grand jury of said
23 county, that before the finding of this
24 indictment, Willie Lizzlie Gardner, whose name
25 is otherwise unknown to the grand jury, did

1 intentionally cause the death of Travis
2 Benefield by shooting him with a gun and cause
3 said death during the time that Willie Lizzlie
4 Garnder and/or an accomplice was in the course
5 of committing a theft of a gun and/or lawful
6 currency and/or coinage of the United States of
7 America, better descriptions of which are
8 unknown to the grand jury, of some value, the
9 value of which is unknown to the grand jury,
10 the property of Travis Benefield and/or Premium
11 Package by the use of force against the person
12 of Travis Benefield with the intent to overcome
13 his physical resistance or physical power of
14 resistance while the said Willie Lizzlie
15 Gardner and/or an accomplice was armed with a
16 deadly weapon or dangerous instrument, to wit:
17 a gun, a better description of which is unknown
18 to the grand jury, in violation of Section
19 13A-5-40 of the Code of Alabama, 1975, as
20 amended, against the peace and dignity of the
21 State of Alabama, signed Eleanor Brooks,
22 District Attorney.

23 Now, as to this charge -- I want you to
24 understand from the beginning that the
25 indictment has no bearing on the guilt or

1 innocence of any person. It is not evidence in
2 this case. It is merely the paperwork or legal
3 process by which a case is presented for
4 trial.

5 Now, as to this charge, the defendant has
6 pled guilty. However, before a conviction can
7 be had, each of you must be satisfied beyond a
8 reasonable doubt of defendant's guilt;
9 otherwise, he is entitled to an acquittal.

10 Furthermore, the defendant is presumed to
11 be not guilty of the offense and that
12 presumption attends him until his guilt is
13 established from the evidence beyond a
14 reasonable doubt.

15 The presumption that the defendant is not
16 guilty is evidence in the case and is to be
17 considered by you along with the other evidence
18 in the case. It is a fact which is to be
19 considered by you and goes with the defendant
20 to your verdict unless the evidence convinces
21 you beyond a reasonable doubt of the proof of
22 each and every element of the charge.

23 Now, I mentioned reasonable doubt. What
24 does that mean? It simply is a fair doubt
25 based upon reason and common sense and arising

1 from the evidence. In short, it is a doubt for
2 which you can assign a reason that comes from
3 the evidence.

4 A reasonable doubt may arise not only from
5 the evidence produced but also from a lack of
6 evidence or any part of the evidence.

7 The burden is on the State to prove the
8 defendant guilty beyond a reasonable doubt of
9 each and every essential element of the crime
10 as charged.

11 Now, the law tells us this about the term
12 reasonable doubt. It is not just a mere
13 possible doubt. In other words, it is not a
14 mere guess or surmise or capricious doubt.
15 Now, the doubt which would justify an acquittal
16 must be an actual and substantial doubt. The
17 reasonable doubt which entitles an accused to
18 an acquittal is not fanciful, vague,
19 conjectural or speculative but is a reasonable
20 substantial doubt arising from the evidence and
21 remaining after a careful consideration of the
22 testimony such as reasonable fair-minded and
23 conscientious men and women would consider
24 under all the circumstances.

25 If you, after considering all the evidence

1 Just as you are the judges of the
2 evidence, you are also the sole and exclusive
3 judges of the credibility of witnesses and the
4 weight that should be given to their
5 testimony.

6 In passing on the credibility of a
7 witness, you have the right to consider any
8 bias, interest or prejudice that may have been
9 exhibited to you while that witness testified,
10 the demeanor of the witness on the stand, that
11 is, how they appeared to you while testifying;
12 their basis for testifying, that is, how they
13 know the facts they testified to, whether they
14 had an opportunity to discern and know those
15 facts.

16 I want to point out that I'm not permitted
17 to express my opinion or comment on the effect
18 of the evidence and the credibility of any
19 witness in this case; therefore, any rulings,
20 statement or expression which may have been
21 made by me during the course of this trial is
22 not to be considered by you as any effort on my
23 part to convey to you any feeling or opinion
24 about the facts in the case or the credibility
25 of any witness.

1 here, have an abiding conviction of the truth
2 of the charge, then you are convinced beyond a
3 reasonable doubt, and it would be your duty to
4 convict the defendant. But evidence which
5 merely gives rise to a surmise, conjecture or
6 suspicion of guilt is not sufficient in order
7 to base a conviction on it.

8 Now, the State is not required to convince
9 you of the defendant's guilt beyond all doubt
10 or to a mathematical certainty but simply
11 beyond all reasonable doubt.

12 Now, as I told you earlier, you are the
13 sole judges of the evidence. I'm going to
14 again explain again to you what is and what is
15 not evidence. First, the indictment is not
16 evidence. In addition, arguments, statements
17 and assertions of attorneys are not evidence.
18 Rulings of the Court are not evidence. What is
19 evidence in this case?

20 First, it is testimony of witnesses under
21 oath from the witness stand. It is also any
22 exhibits that are actually admitted into
23 evidence. Finally, it is any presumptions of
24 law that I have given to you, such as the
25 presumption of innocence.

1 There has been some testimony from certain
2 witnesses who are considered to be experts. An
3 expert witness is simply one who, by education,
4 training and/or experience has attained such
5 skill, knowledge or experience of some science,
6 profession, business or occupation not of
7 common knowledge to the average layman.

8 As I said, witnesses have testified as
9 experts and have been permitted to express an
10 opinion and/or draw conclusions. In
11 considering their testimony, you should give it
12 the same weight as you would any other
13 witness. You are not required to accept the
14 conclusions or expressed opinions of expert
15 witnesses. It is up to you to determine for
16 yourselves the weight to be given such
17 testimony and evidence when considered in
18 connection with all other evidence material to
19 the issue.

20 The defendant in this case is charged with
21 capital murder. The law states an intentional
22 murder committed during a robbery in the first
23 degree is capital murder.

24 A person commits an intentional murder
25 when he causes the death of another person and

1 in performing the act or acts which caused the
2 death of that person he intends to kill that
3 person or another person.

4 A person commits a robbery in the first
5 degree if in the course of committing or
6 attempting to commit a theft he uses force
7 against the person of the owner or any person
8 present with the intent to overcome his
9 physical resistance or physical power of
10 resistance or threatens the eminent use of
11 force against the person of the owner or any
12 person present with intent to compel
13 acquiescence to the taking of or escaping with
14 the property and in doing so he is armed with a
15 deadly weapon.

16 To convict, the State must prove beyond a
17 reasonable doubt each of the following elements
18 of intentional murder during robbery in the
19 first degree: One, that Travis Benefield is
20 dead; two, that the defendant, Willie Gardner,
21 caused the death of Travis Benefield by
22 shooting him; three, that in committing the
23 acts which caused the death of Travis
24 Benefield, the defendant intended to kill the
25 deceased or another person.

1 to a result or to a conduct when his or her
2 purpose is to cause that result or to engage in
3 that conduct.

4 A deadly weapon is a firearm.

5 "During" means in the course of commission
6 of or in connection with or in immediate flight
7 from the commission of a robbery.

8 If you find from the evidence the State
9 has proved beyond a reasonable doubt each of
10 the above elements of the offense of murder
11 during robbery in the first degree as charged,
12 then you shall find the defendant guilty of
13 capital murder.

14 If you find that the State has failed to
15 prove beyond a reasonable doubt any one or more
16 of the elements of the offense of murder during
17 robbery in the first degree, then you cannot
18 find the defendant guilty of capital murder.

19 The prosecution and the defense have
20 agreed on the truth of certain facts. These
21 stipulated facts are to be considered by you as
22 evidence as any other piece of evidence.

23 A plea of guilty is an admission of all
24 elements of the offense and may in a capital
25 offense be considered in determining whether

1 the State has met its burden of proof.

2 A person is legally accountable for his
3 behavior -- excuse me. Let me start that over.
4 A person is legally accountable for the
5 behavior of another constituting a criminal
6 offense if, with the intent to promote or
7 assist the commission of the offense, he
8 procures, induces or causes such other person
9 to commit the offense, or aids or abets such
10 other person in committing the offense.

11 The words aid and abet comprehend all
12 assistance rendered by acts or words of
13 encouragement or support or presence, actual or
14 constructive, to render assistance should it
15 become necessary.

16 A nontrigger man can be convicted of a
17 capital offense if he or she was a knowing
18 accomplice to the intentional killing itself.

19 In a moment, you will be begin your
20 deliberations. In passing upon the evidence,
21 you have the right to use your knowledge of
22 people and their affairs. This is the tool
23 that is given to you in which some of us may
24 simply call your common sense.

25 In arriving at your verdict, you must not

1 permit sympathy, prejudice or emotion to
2 influence you. Furthermore, you must not base
3 your verdict upon any preconceived ideas of
4 what would be a popular or unpopular verdict.
5 As you know, your verdict must strictly be
6 based on the evidence presented and the law
7 that applies to this case.

8 I also want to explain that before you may
9 reach a verdict, all 12 of you must agree on
10 the same verdict. There can be no split
11 verdict. It must be unanimous.

12 In a moment, you will go back to the jury
13 room. The first thing you need to do is select
14 one person to act as a foreperson. That person
15 shall have no greater weight in your
16 deliberations than anyone else but will simply
17 act as your spokesperson.

18 Discuss the case, every facet of it. If
19 you have a question, have the foreperson write
20 out the question, sign it, knock on the door.
21 If it is a question of law, I will answer it;
22 however, if it's a question of fact, I cannot,
23 as you are the sole and exclusive judges of the
24 facts.

25 Once you've reached a verdict, have the

1 foreperson sign it, knock on the door. You
2 will be brought back in, and the verdict will
3 be read in the courtroom.

4 I've prepared verdict forms, and I'm going
5 to go over that with you right now. There are
6 two possible verdicts in this case: We, the
7 jury, find the defendant guilty of capital
8 murder; or we, the jury, find the defendant not
9 guilty of capital murder.

10 Whatever your verdict is, you will put an
11 X or check to the left of the verdict. The
12 foreperson will sign it and also date this
13 form.

14 There's one thing I need to do before I
15 let you begin to deliberate. As you know, a
16 jury in Alabama is composed of 12 people.
17 There have been 14 of you. We do 14 or an
18 extra two jurors in this case just in case
19 somebody had to be excused we wouldn't have to
20 start the trial over. So what I'm going to do
21 at this time is excuse those two jurors. But
22 let me get those two jurors to remain seated
23 until I get everybody in the deliberation
24 room. That would be Ms. Boone and Ms. Carson.
25 Where are you? All right. If you would remain

1 seated and let me get all of you into the jury
2 deliberation room. Do not begin to deliberate
3 until I tell you it is okay to do so.

4 (The following proceedings
5 occurred outside the presence of
6 the jury:)

7 THE COURT: I'm going to excuse these
8 two at this time. Do you have any problem with
9 that?

10 MS. BROOKS: No, sir.

11 MR. BELSER: No, Your Honor.

12 THE COURT: Thank y'all very much for
13 your service. I appreciate you being here. If
14 you would, check with Mr. Merrill's office, the
15 court administrator, to see if they need you
16 this afternoon or if you need to call the
17 code-a-phone, okay? Thank you very much for
18 your service.

19 (Alternate jurors excused.)

20 THE COURT: How about the charge?

21 MS. BROOKS: The State is satisfied.

22 MR. BELSER: Satisfied.

23 THE COURT: All right. Mrs. King, if
24 you would put that together and y'all check
25 it. Here is the verdict form.

1 (Jury deliberating.)

2 THE COURT: All right. Y'all ready?

3 Let the jury in.

4 (The following occurred in the
5 presence of the jury:)

6 THE COURT: All right. Is that
7 everybody? Y'all be seated. Have the ladies
8 and gentlemen reached a verdict?

9 JUROR: Yes, we have, Your Honor.

10 THE COURT: Would you hand that to
11 Ms. Cummings and let me see it? All right.

12 Would you give us the verdict of the jury,
13 please, sir?

14 JUROR: Yes, sir. We find the
15 defendant guilty of having committed the crime
16 of capital murder.

17 THE COURT: All right, sir. Anything
18 else?

19 MS. BROOKS: No, sir.

20 MR. BELSER: No, sir.

21 THE COURT: Thank y'all very much for
22 your service.

23 Yes, ma'am.

24 MS. BROOKS: Judge, I think we've done
25 this, but on the record, I would like to waive

1 the presence of the jury for a sentencing
2 hearing.

3 THE COURT: All right.

4 MR. BELSER: No objection.

5 THE COURT: Ladies and gentlemen,
6 thank you very much for your service. You are
7 excused at this time. If you would, check with
8 Mr. Merrill's office to see if he needs you
9 this afternoon or if he wants you to call the
10 code-a-phone, but thank you very much. You're
11 dismissed at this time.

12 (Jury dismissed.)

13 THE COURT: All right. Mr. Gardner, a
14 jury of your peers has found you guilty of
15 capital murder. The Court is of the opinion
16 that the evidence warrants the verdict, and I
17 hereby find you guilty of capital murder. All
18 right. Now --

19 MS. BROOKS: For purposes of the
20 sentencing hearing, Your Honor, the State
21 offers all the evidence presented in the jury
22 trial and the verdict, which means the one
23 aggravator would be a murder committed during a
24 robbery. We further would stipulate to the
25 mitigating factors of the fact that the

1 defendant was only 16 at the time of the
2 offense and had no significant criminal
3 history.

4 We further offer for purposes of
5 sentencing the plea agreement which was
6 previously before the Court as an exhibit.

7 THE COURT: All right.

8 MR. BELSER: No objection.

9 THE COURT: What do y'all want to do
10 about sentencing?

11 MS. BROOKS: We're ready.

12 THE COURT: Waive presentence report?

13 MS. BROOKS: State so waives.

14 MR. BELSER: We'll waive presentence
15 report.

16 THE COURT: Do you have anything to
17 say why sentence of law should not now be
18 pronounced upon you, Mr. Gardner?

19 THE DEFENDANT: No, sir.

20 THE COURT: Sir?

21 THE DEFENDANT: No, sir.

22 THE COURT: You are hereby sentenced
23 to life in prison without the possibility of
24 parole, court costs, restitution in the amount
25 of \$35,481.38. What else do I need to do on

1 that?

2 MS. BROOKS: Crime Victims'
3 compensation of \$50 in each of the three
4 counts, attorneys' fees, and no fines.

5 THE COURT: Okay. Fifty dollars in
6 each of the counts on Crime Victims'
7 Compensation Commission. And also, as to the
8 other sentence, the other counts -- now, that
9 was capital murder which I just sentenced you
10 to. As to the -- what was it, the robbery?

11 MR. BELSER: Attempted murder and
12 robbery.

13 THE COURT: As to the attempted murder
14 and robbery, what is the range there?

15 MR. KIDD: Judge, on a class A felony,
16 10. With a gun, it would be 20 to life.

17 THE COURT: Okay. In each of those
18 counts, you are hereby sentenced to life in
19 prison on those counts. All right. Anything
20 else?

21 MS. BROOKS: In addition to court
22 costs, attorneys' fees and the \$50.

23 THE COURT: That's on all the counts.

24 MS. BROOKS: Judge, I've prepared a
25 court-ordered monies reflecting that.

1 THE COURT: All right. Anything else
2 I need to do?

3 MS. BROOKS: No, sir. If we could
4 borrow your courtroom for just a moment for a
5 meeting as agreed on in paragraph 10 of the
6 parties, per agreement.

7 THE COURT: Do y'all need me for
8 anything else?

9 MR. BELSER: No, Your Honor.

10 THE COURT: Thank you. All right.
11 Thank y'all.

12 (Court adjourned.)
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CERTIFICATE OF COMPLETION OF REPORTER'S TRANSCRIPT
IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT

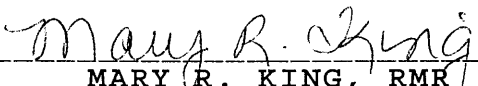
STATE OF ALABAMA vs. WILLIE LIZZLIE GARNER

CASE NUMBER: CC-02-732

I, Mary R. King, Official Court
Reporter and Registered Merit Reporter for the
Fifteenth Judicial Circuit of Alabama, hereby
certify that I have this date completed and
filed with the clerk of the trial court the
original and three copies of a true and correct
transcript of all the evidence and matters
taken in the above-styled cause. All pages are
numbered serially, prefaced by an index and
ending with the number appearing at the top of
this certificate.

I further certify that a copy of this
certificate has this date been served on the
clerk of the appellate court and counsel for
the defendant.

Dated this 9th day of February, 2005.



MARY R. KING, RMR
OFFICIAL COURT REPORTER